

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SAFECOVER ROOFING, LLC,

Plaintiff,

v.

PRO-COVER ROOFING, INC., and  
VINCENTE NOLASCO-IGNACIO,  
individually,

Defendants.

CASE NO. 3:20-cv-06212-RJB

ORDER GRANTING, IN PART,  
AND DENYING, IN PART,  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT

THIS MATTER comes before the Court on Plaintiff Safecover Roofing, LLC's ("Plaintiff" or "Safecover") Motion for Default Judgment Against Defendants. Dkt. 13. The Court has considered the motion and the remaining file.

**I. BACKGROUND**

On December 16, 2020, Plaintiff filed the complaint in this matter alleging trademark and trade name infringement in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.* and RCW 19.86 and unfair competition pursuant to 15 U.S.C. § 1125 and RCW 19.77. Dkt. 1. On

December 19, 2020, Plaintiff filed proof of service against both defendants Pro-Cover Roofing, Inc. and Vincente Nolasco-Ignacio (“Defendants”). Dkts. 5 and 6.

There appear to be four designs at issue. The first two are Plaintiff’s trademarks:



The second two are designs used by Defendants:



On January 21, 2021, the Clerk of the Court entered default against Defendants pursuant to Fed. R. Civ. P. 55(a) and W.D. Wash. Local Civil Rule 55(a) for failure to plead or otherwise defend.

Plaintiff now moves for default judgment against Defendants and the following relief: a permanent injunction prohibiting use of Defendants’ logo, name, and any other confusingly similar mark; an order requiring Defendants deliver for destruction all products containing the infringing mark and name; transfer of the Pro-Cover Roofing domain name; and reasonable attorney’s fees and costs. Dkts. 1 and 13.

## II. DISCUSSION

### A. TRADEMARK AND TRADE NAME INFRINGEMENT

Pursuant to Fed. R. Civ. P. 55(b), a court may order default judgment following the entry of default. The entry of default, however, does not automatically entitle the plaintiff to a court-

1 ordered default judgment. *See Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir.  
2 1977). Instead, all allegations, other than those relating to damages, are presumed to be true, and  
3 the court may order default judgment at its discretion. *Id.*

4 Assuming Plaintiff's allegations are true, Plaintiff has made a showing of trademark and  
5 trade name infringement.

6 "The test for trademark infringement under state, federal, and common law is whether  
7 there will be a likelihood of confusion." *M2 Software, Inc. v. Madacy Entertainment*, 421 F.3d  
8 1073, 1080 (9th Cir. 2005). This test is used for all four of Plaintiff's causes of action. *See e.g.*,  
9 *New W. Corp. v. NYM Co. of Cal. Inc.*, 595 F.2d 1194, 1201 (9th Cir. 1979); *BBC Grp. V. Island*  
10 *Life Rest. Grp.*, 413 F. Supp. 3d 1032, 1049 (W.D. Wash. 2019) ("The Washington dilution  
11 statute is identical to the federal dilution statute under 15 U.S.C. § 125(c)(2)(A).").

12 To determine whether there is a likelihood of confusion, courts in the Ninth Circuit  
13 consider the following eight factors: "(1) strength of the mark; (2) proximity of the goods; (3)  
14 similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type  
15 of goods and the degree of care likely to be exercised by the purchaser; (7) defendant's intent in  
16 selecting the mark; and (8) likelihood of expansion of the product lines." *Id.*

17 Considering the eight elements together, Defendants' name and logo, which includes the  
18 name "Pro-Cover Roofing" and uses similar design and color elements as Plaintiff's trademark,  
19 has a likelihood of confusing the public. The parties both provide roofing services, are based  
20 near one another, and Plaintiff alleges that "approximately a half dozen instances of actual  
21 confusion between our companies" occurred "[b]ecause the company name, word and design  
22 trademarks are so similar, people recall 'COVER' or the unique geometric design and color, and  
23  
24

1 are confused into believing PRO-COVER ROOFING is the same as SAFECOVER ROOFING.”  
2 Dkt. 14 at 3.

3 Therefore, Plaintiff’s motion for default judgment should be granted as to trademark and  
4 trade name infringement. Defendants should be enjoined from using both logos at issue, the  
5 name “Pro-Cover Roofing,” and any other confusingly similar marks. Neither requiring  
6 Defendants to turn over all products with the infringing design, nor transfer of the Pro-Cover  
7 domain name appears necessary.

8 **B. ATTORNEY’S FEES AND COSTS**

9 The only monetary relief Plaintiff seeks in the motion for default judgment is for  
10 attorney’s fees and costs.

11 The prevailing party in a trademark dispute may recover reasonable attorney’s fees in  
12 “exceptional cases.” 15 U.S.C. § 1117(a). A trademark case is generally considered exceptional  
13 “when the infringement is malicious, fraudulent, deliberate or willful.” *Lindy Pen Co., Inc. v.*  
14 *Bic Pen Corp.*, 982 F.2d 1400, 1409 (9th Cir. 1993). Infringement is willful when “the  
15 defendant was actually aware of the infringing activity,” or showed “reckless disregard for, or  
16 willful blindness to, the copyright holder’s rights.” *Louis Vuitton Malletier, S.A. v. Akanoc*  
17 *Solutions, Inc.*, 658 F.3d 936, 944 (9th Cir. 2001).

18 This case is not “exceptional.” It is not clear that Defendants were actually aware of or  
19 recklessly disregarded Plaintiff’s rights. Nor is there evidence of more nefarious intent.

20 Therefore, Plaintiff’s request for attorney’s fees and costs should be denied.

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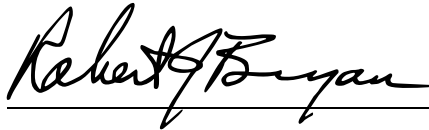
III. ORDER

Therefore, it is hereby ORDERED:

- Plaintiff's Motion for Default Judgment Against Defendants (Dkt. 13) IS GRANTED, IN PART, AND DENIED, IN PART;
  - Plaintiff's motion is granted as to trademark and trade name infringement;
  - DEFENDANTS ARE ENJOINED from using the trade name "Pro-Cover Roofing," the logo designs at issue, or any other confusingly similar marks; and
  - Plaintiff's motion is denied as to attorney's fees and costs.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 8<sup>th</sup> day of April, 2021.



ROBERT J. BRYAN  
United States District Judge